

Michael D. Kinkley  
Scott M. Kinkley  
Michael D. Kinkley, P.S.  
4407 N. Division, Suite 914  
Spokane, WA 99207  
(509) 484-5611  
[mkinkley@qwestoffice.net](mailto:mkinkley@qwestoffice.net)  
[skinkley@qwestoffice.net](mailto:skinkley@qwestoffice.net)

Kirk D. Miller  
Kirk D. Miller, P.S.  
209 E. Sprague Ave.  
Spokane, WA 99202  
(509) 413-1494  
[kmiller@millerlawspokane.com](mailto:kmiller@millerlawspokane.com)

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

KELLI GRAY, and all other similarly  
situated,

Plaintiff,

v.

SUTTELL & ASSOCIATES;  
MIDLAND FUNDING, LLC; MARK  
T. CASE, and JANE DOE CASE,  
husband and wife, KAREN HAMMER  
and JOHN DOE HAMMER

Defendants.

Case No.: CV-09-251-EFS

MEMORANDUM IN SUPPORT OF  
PLAINTIFF'S MOTION TO COMPEL  
DISCOVERY RESPONSES TO  
PLAINTIFF'S FIRST SET OF  
INTERROGATORIES AND  
REQUESTS FOR PRODUCTION  
REGARDING NET WORTH TO THE  
SUTTELL DEFENDANTS

On March 2, 2010, Plaintiff served the Suttell Defendants with the discovery  
regarding their net worth. Their responses were due of April 1, 2010. On April 6,  
2010, the Suttell Defendants served their response objecting to each and every

MEMORANDUM IN SUPPORT OF  
MOTION TO COMPEL DISCOVERY

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1 request and interrogatory. Defendants wholly refused to provide any answer or  
2 production claiming that each request was “overly broad, burdensome, intended to  
3 cause annoyance and embarrassment, and premature as no class has been  
4 certified.” Defendants further indicated that each “will provide information as to  
5 his net worth at such time as the court rules on class certification upon to execution  
6 of a Stipulated Protective Order.” Defendants failed to move for a protective order  
7 and have never offered a protective order for Plaintiff to consider. Therefore,  
8 Plaintiff offered to the Defendants, and now has requested that the Court enter a  
9 proposed protective order. (Ct. Rec. 65). Plaintiff moved for class certification on  
10 July 12, 2010. (Ct. Rec. 28). The hearing on class certification is scheduled for  
11 September 9, 2010.  
12

13  
14  
15 Defendants’ net worth is an issue in a putative FDCPA class action. 15 USC  
16 § 1692k(a)(2)(B). In an FDCPA class action the class is entitled to up to one  
17 percent (1%) of the net worth of each defendant as class statutory damages.  
18

19 In the January 11, 2010, Order and Notice Setting the scheduling conference  
20 the Court required the parties to discuss and determine whether any party would  
21 seek, **“(4) bifurcation of the discovery process if either party anticipates**  
22 **seeking class certification, i.e. class certification-focused discovery & all other**  
23 **discovery.”** (Ct. Rec. 14, p.2) (emphasis in original). No party requested  
24 bifurcation. (Ct. Rec. 18).  
25

1 Plaintiff requires the information requested in the “net worth” written  
 2 discovery to support preparation of an expert report due September 7, 2010.  
 3 Defendant Midland Funding, LLC has agreed to stipulate to a net worth in excess  
 4 of Fifty Million Dollars (\$50,000,000.00) indicating a cap of Five Hundred  
 5 Thousand Dollars (\$500,000.00) for the purposes of determination of the  
 6 maximum amount of the class statutory damages available. 15 USC §  
 7 1692k(a)(2)(B). The Motion to Compel is only directed to the Suttell Defendants.

8 In the event that the trial date is continued and a new scheduling order  
 9 entered (as requested by the parties), Plaintiff would propose that Defendants be  
 10 required to fully respond to the “net worth” written discovery within thirty (30)  
 11 days following the Court’s Order certifying a class. The Plaintiff requests that the  
 12 Court then allow sixty (60) days from the receipt of those responses for the  
 13 Plaintiff to serve (and email to the Court) the net worth expert report.  
 14

15 Dated this the 10<sup>th</sup> day of August, 2010  
 16

17 *Michael D. Kinkley, P.S.*  
 18

19 s/ Scott M. Kinkley

20 Scott M. Kinkley  
 21 Attorney for Plaintiff  
 22 WSBA # 42434  
 23 (509) 484-5611  
 24 skinklev@awestoffice.net  
 25

CM/ECF CERTIFICATE OF SERVICE

I hereby certify that on the 10<sup>th</sup> day of August, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Michael D. Kinkley [mkinkley@qwestoffice.net](mailto:mkinkley@qwestoffice.net), [pleadings@qwestoffice.net](mailto:pleadings@qwestoffice.net);  
Scott M. Kinkley [skinkley@qwestoffice.net](mailto:skinkley@qwestoffice.net);  
Kirk D. Miller [kmiller@millerlawspokane.com](mailto:kmiller@millerlawspokane.com)  
Carl Hueber [ceh@winstoncashatt.com](mailto:ceh@winstoncashatt.com);  
John D. Munding [munding@crumb-munding.com](mailto:munding@crumb-munding.com)

*Michael D. Kinkley P.S.*

s/Scott M. Kinkley  
Scott M. Kinkley  
WSBA # 42434  
Attorney for Plaintiff  
4407 N. Division, Suite 914  
Spokane, WA 99207  
(509) 484-5611  
[skinkley@qwestoffice.net](mailto:skinkley@qwestoffice.net)